

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERVIN L. SMITH, JR.,

Defendant.

8:19CR68

ORDER

This matter is before the Court on defendant Ervin L. Smith, Jr.’s (“Smith”) *pro se* Motion for Sentence Reduction (Filing No. 191) under 18 U.S.C. § 3582(c)(1)(A). That statute authorizes Smith to move the Court to “reduce [his] term of imprisonment” for “extraordinary and compelling reasons” after fully exhausting his administrative remedies with the Bureau of Prisons (“BOP”) or thirty days after the warden of the facility where he is incarcerated receives a request to file such a motion on his behalf. *See id.*

Smith states he is requesting a reduction so he can care for his father who ostensibly is in bad health. He has provided records indicating that his warden and a Regional Director for the BOP have denied his requests for relief within the last few months.

Though his request is short on details, the Court finds Smith’s reported need to care for his father potentially raises a colorable claim under § 3582(c)(1)(A)(i). The Court further finds that appointing counsel will not only assist Smith in obtaining the requisite evidentiary support for his claim but will also aid the Court in determining whether his familial circumstances warrant the requested relief.

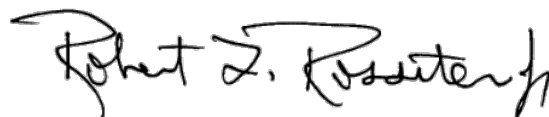
For those reasons,

IT IS ORDERED:

1. The Federal Public Defender for the District of Nebraska is appointed to represent defendant Ervin L. Smith, Jr. for the limited purpose of determining whether there are extraordinary and compelling reasons to reduce his term of imprisonment.
2. In the event the Federal Public Defender should decline this appointment because of a conflict of interest or on the basis of the Amended Criminal Justice Act Plan, the Federal Public Defender shall provide the Court with a draft appointment order (CJA Form 20) bearing the name and other identifying information of the CJA Panel attorney identified in accordance with the Amended Criminal Justice Act Plan for this district.
3. If upon review the Federal Public Defender should conclude that Smith's motion is frivolous, the Federal Public Defender may move to withdraw as counsel.
4. The U.S. Probation and Pretrial Services Office is directed to investigate Smith's request and promptly file under seal a report on that investigation.
5. The probation office is authorized to disclose Presentence Investigation Reports to the Federal Public Defender and the United States Attorney for the purpose of evaluating the motion. Smith's counsel shall provide the Presentence Investigation Report to any subsequently appointed or retained counsel. In accordance with the policy of the Federal Bureau of Prisons, no Presentence Investigation Report shall be provided to inmates.
6. The government and Smith's counsel shall each file within ten days of the probation office filing its investigation report a brief addressing Smith's request for sentencing relief and provide any evidence necessary to the Court's disposition of his motion. Absent an extension, the motion shall be deemed fully briefed and submitted as of that date.

Dated this 21st day of May 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge